

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HORACE WALLACE, # 212267

Petitioner,

CASE NUMBER: 08-13479
HONORABLE VICTORIA A. ROBERTS
Magistrate Judge Paul J. Komives

v.

HUGH WOLFENBARGER, Warden

Respondent.

**ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

On August 12, 2008, Petitioner filed an application for writ of habeas corpus under 28 U.S.C. § 2254. The Court referred the matter to Magistrate Judge Paul J. Komives for Report and Recommendation ("R & R") pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Komives recommended that the Court deny Petitioner's habeas petition and deny a certificate of appealability ("COA"). Petitioner objected.

On April 26, 2011, the Court adopted the magistrate's R & R, denied his application for writ of habeas corpus, and expressly declined to issue a COA. (Doc. # 18 at 4-5). However, on May 27, 2011, Petitioner moved for a COA (Doc. # 22); he also moved for leave to proceed on appeal *in forma pauperis* ("IFP"). (Doc. # 24). The Court again referred the matters to Magistrate Komives for R & R.

On July 20, 2011, Magistrate Komives recommended that the Court deny a COA and grant Petitioner leave to proceed IFP on appeal. On August 17, 2011, Petitioner objected to the R & R. This matter is before the Court on Petitioner's objections.

Upon *de novo* review of Petitioner's objections, the Court **OVERRULES** them and **ADOPTS** the R & R. Petitioner simply rehashes the arguments made in his original habeas petition and says he made a substantial showing of the denial of a constitutional right under 28 U.S.C. § 2253(c)(2) to argue that a COA should issue. The Court fully considered these arguments when it denied him habeas relief, and when it declined to issue a COA in the first instance. However, the Court agrees with Magistrate Komives that Petitioner is entitled to proceed IFP on appeal.

For the reasons stated in the R & R, the Court **DENIES** Petitioner's motion for a COA and **GRANTS** his motion to proceed IFP.

IT IS ORDERED.

S/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: September 22, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record and Horace Wallace by electronic means or U.S. Mail on September 22, 2011.

s/Carol A. Pinegar
Deputy Clerk